THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition (M/S) No.73 of 2004

Vinod Pahawa,
S/o Late Sri Ved Prakash Pahawa,
Pahawa Book Depot,
Ghat Road, Rishikesh
District – Dehradun. …… **Petitioner.**

Versus

1. Prescribed Authority,
   Civil Judge (Junior Division)
   Rishikesh, District – Dehradun.
2. Smt. Uchave Rani
   W/o Late Sri Ram Swaroop Gour
3. Sri Vinod Kumar Gour.
4. Sri Vijender Kumar Gour.
5. Sri Hemant Gour
   All the sons of Late Sri Ram Swaroop Gour.
6. Smt. Parbha Bhargava
   D/o Late Sri Ram Swaroop Gour,
   W/o Sri Deelip Bhargava
7. Smt. Chandrakanta Sharma
   D/o Late Sri Ram Swaroop Gour,
   W/o Sri Ganesh Sharma
   All the R/o 21-Main Bazar Rishikesh
   District- Dehradun.

…… **Respondents.**

Sri Arvind Kumar Sharma, leaned counsel for the petitioner.
Sri Nand Prasad, learned Standing Counsel for the respondent no. 1.
Sri J.P. Joshi, Adv., learned counsel for respondent nos. 2 to 7.

Dated February 24, 2006.

Hon'ble B.S. Verma, J.

The petitioner has filed the present writ petition for quashing the orders dated 25-9-2002 and 14.1.2004, passed by the Civil Judge (Junior Division) Rishikesh (Dehradun) (Annexure Nos. 2 and 7 respectively to the writ petition. By order dated 25-9-2002, the leaned Civil Judge (Jr. Div) rejected the application of the defendant-petitioner praying for time to file written statement on the ground that the defendant was already given sufficient opportunity to file the written statement and 24.12.2002 was fixed for evidence. By order dated 14.1.2004, the learned Civil Judge

(J.D.) has rejected the application 38-Ka moved by the defendant-petitioner along with written statement, dated 21.11.2002, with a prayer to take the written statement on record, as well as application 41-Ka dated 26.4.2003 moved under Order 9, Rule 7 and Section 151 of the C.P.C. for setting aside the ex-parte order dated 26-0-4-2003.

Relevant facts are that the respondent nos. 2 to 7 filed a suit for release of accommodation under U.P. Act No. 13 of 1972 before the civil Judge (Jr. Div.) Rishikesh which was registered as Prescribed Authority Case No. 3 of 2000, Smt. Uchhav Rani Vs. Vinod Pahwa. In this case, the petitioner moved an application (38-ka) on 21.11.2002 alleging therein that the defendant could not file his written statement on 25-9-2002 as he was engaged in the marriage of is son and prayed for permission to take the written statement (39-ka) on record and to afford opportunity of evidence to him. This application was rejected by the learned Civil Judge (Jr. Div) on 14-1-2004. Another application was also moved by the petitioner (41-ka) under Order 9, Rule 7 C.P.C. on 26.4.2003. Both these application were rejected by the learned Civil Judge vide order dated 14-1-2004. By earlier order dated 25.9.2002, the opportunity for further time to file written statement to the petitioner was closed.

I have heard leaned counsel for both the parties and perused the entire material on record.

The material placed on record reveals that the order to proceed ex-parte against the defendant –petitioner was passed on 25-9-2002 and on 21.11.2002, i.e. within a period of two months the petitioner filed application for recalling the said order. The limitation to file application for recalling the ex-parte order as provided under the Limitation Act is 30 days. Approximately, there was delay of about a month in filing the application 38-Ka by the petitioner. A perusal of the application 38-Ka shows that the

petitioner has reasonably explained therein that he was busy in the marriage of his son so that he could not attend the Court. The learned Civil Judge (Jr. Div.) in the order dated 14.1.2004 has observed that the case was fixed for 26.4.2003 for ex-parte hearing without disposal of application 38-Ka and this application was rejected as being barred by limitation as late as on 14.1.2004 i.e. after a lapse of 1 year, 2 months. In my view, during this period of one year, the proceedings of the case could have been concluded after giving adequate opportunity to both the parties. The record further reveals that the application 41-Ka moved under Order 9, Rule 7 C.P.C. was moved by the petitioner on 26-4-2003 itself, which was the date fixed for ex-parte hearing in the case. By that time, the application 38-Ka for permission to take written statement (39ka) on record was pending for disposal before the leaned Civil Judge (Jr. Div.).

In recalling the order, the courts must see whether the party has explained the delay reasonable and a liberal view should be taken.

Considering the facts and circumstances of the case and the fact that delay in filing he application 38-ka along with written statement paper no. 39-Ka was satisfactory explained by the petitioner and since the petitioner had filed the application (41-Ka) on he date fixed for ex-parte hearing i.e. 26-4-2003, I am of view that both the application 38-Ka ad 41-Ka moved by the petitioner deserve to be allowed and the impugned orders dated 25-9-2002 and 14-1-2004 are liable to be quashed. It is a fit case in which opportunity of hearing and to adduce evidence to the petitioner is given.

Learned counsel for the respondents Sri J.P. Joshi submitted that if the Court comes to the conclusion that the impugned orders are liable to be set aside, in that case, the proceedings of he Suit No. 3 of 2003, Smt. Uchhav Rani and

others Vs. Vinod Pahawa be ordered to be expedited within time bound period.

In the interest of justice, the impugned orders dated 25-9-2002 and 14-1-2004 passed by the learned Civil Judge (Jr. Div) Rishikesh (Dehradun) are hereby quashed. Both the applications 38-Ka and 41-Ka filed by he petitioner are allowed. Written Statement 39-Ka filed by the petitioner before the court below is taken on recored. The respondents may file replica before the learned Civil Judge (Jr. Div.) by 8-3-2006. The parties are directed to appear before the trial court on 8-3-2006 and the Civil judge (Jr. Div.) Rishikesh is directed to hear the parties and after giving opportunity of hearing and to adduce evidence decide the suit expeditiously preferably within a period of three months form today.

The Writ Petition is allowed accordingly.

(B.S. Verma, J.)

RCP